November 26, 2007

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Commissioner Adelstein:

As one who has argued strongly for thorough and open process in Commission adjudication, we are deeply troubled by the apparently closed door examination of an important consumer and public interest issue from which we have been excluded.

A recent analysis provided to the Federal Communications Commission at your request of the extent of cable penetration by Craig Moffet of Sanford Bernstein is totally deficient for the purpose of answering the question of whether cable systems or more than 36 channels serve more than 70 percent of the homes passed. Subject to the sunshine rules, we have no way to demonstrate its weaknesses, but we assure you that when the holes in his analysis are filled in with publicly available data, we conclude that currently cable penetration exceeds 70 percent.

The holes in the Moffet analysis are legion. It:

- provides no data on systems with 36 or more channels,

- offers no estimate of the occupied homes that cable passes,[1]

---

[1] Moffet recognizes that this issue, stating that "there is some debate as to whether publicly reported "homes passed" statistics include or do not include vacant housing. He is, however, unaware of the current occupancy rate for residential housing. He states that "Even if we were to assume that the homes passed statistic as reported to the SEC *include* vacant housing, however, the total number of occupied homes passed among just the issuers of publicly traded securities would still exceed the 90.7 m threshold." In fact, the U.S. Census Bureau reported (October 26, 2007, "Census Bureau Reports on Residential Vacancies and Homeownership,) that the national

- makes no estimate of the number of subscribers to cable systems operated by telephone companies,[2] and

- takes no notice of the undercounting of cable subscribers in multiple dwelling units.

Moffet estimates that there are a total of 71.9 million subscribers to cable systems – 63.5 "publicly reported" and 8.4 million "not publicly reported." There are at least an additional 1.5 million subscribers to telephone company cable networks, which should be added to the count, yielding a total of at least 73.4 million subscribers. This figure is close to the 73.2 million subscriber figure that appeared on the NCTA web site for February 2005 and which is referenced in the FCC's *Twelfth Annual Report* on the Status of Competition in the MVPD market.[3] Given the growth of subscribers claimed by cable companies in 2005-2006 and the growth of cable subscribers reported by telephone company cable systems, it is likely that the number of cable subscribers has increased in the past two years, not decreased.

In 2005, the FCC reported that Warren estimated that there were 8.1 million subscribers to systems with fewer than 36 channels.[4] Even if no such systems upgraded in the past two years, that would leave 65.3 million subscribers to systems with 36 or more channels.

Nielsen estimates that there are 91.8 million homes passed by cable systems with 36 or more channels.

This indicates that the cable penetration rate exceeds 71 percent (64.8/91.8 = .711). This number confirms the number reported in the press for the Warrens data.

We have demonstrated this conclusion on the record, subject to public scrutiny and our conclusion remains unrebutted and correct.

---

occupancy rate is 86%. This suggests that that the occupied homes passed by the publicly issuers would be 90.3 million.

[2] The list of publicly reported issuers does not include AT&T or Verizon, although they both are publicly reported and have more subscribers than some companies on Mr. Moffet's list.

[3] *Twelfth Annual Report,* In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 05-255, March 2, 2006, p. 11.

[4] Id.

Sincerely,

Mark Cooper
Director of Research